

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 3/14/2023
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DARIUS WADE,	:	
	:	
Petitioner,	:	1:21-cv-9138-GHW
	:	
-against -	:	<u>ORDER</u>
	:	
SUPERINTENDENT MELECIO,	:	
	:	
Respondent.	:	
	:	
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GREGORY H. WOODS, United States District Judge:

On February 22, 2023, Magistrate Judge Cott issued a Report and Recommendation (“R&R”) recommending that the Court deny Petitioner’s habeas corpus petition in this case. Dkt. No. 32 at 2. In that R&R, Magistrate Judge Cott determined that Petitioner’s challenge to the validity of his state-court convictions under N.Y. Penal L. §§ 265.03(1)(b) and (3) should be dismissed because (a) his claims are procedurally barred and (b) even if that were not so, the claims are meritless. *See id.*

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within fourteen days of receiving a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). The Court reviews for clear error those parts of the report and recommendation to which no party has timely objected. 28 U.S.C. § 636(b)(1)(A); *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

No objection to the R&R was submitted within the fourteen-day window. The Court has reviewed the R&R for clear error and finds none. *See Braunstein v. Barber*, No. 06 Civ. 5978 (CS)

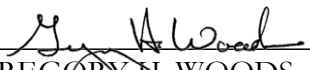
(GAY), 2009 WL 1542707, at *1 (S.D.N.Y. June 2, 2009) (explaining that a “district court may adopt those portions of a report and recommendation to which no objections have been made, as long as no clear error is apparent from the face of the record.”). The Court, therefore, accepts and adopts the R&R in its entirety. For the reasons articulated in the R&R, the petition is denied.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962). Petitioner has not made a substantial showing of the denial of a constitutional right, so the Court denies a certificate of appealability under 28 U.S.C. § 2253.

The Clerk of Court is directed to mail a copy of this order to Petitioner, to enter judgment for Respondent, and to close this case.

SO ORDERED.

Dated: March 14, 2023
New York, New York



GREGORY H. WOODS
United States District Judge